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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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<p>SIONE VATUVEI,</p> <p style="text-align: right;">Petitioner,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: right;">Respondent.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PETITIONER’S MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY</p> <p>Case No. 2:20-CV-607 TS Criminal Case No. 2:09-CR-758 DB</p> <p>District Judge Ted Stewart</p>
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This matter is before the Court on Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. For the reasons discussed below, the Court will deny the Motion and dismiss this case.

### I. BACKGROUND

Petitioner was convicted of discharging a firearm during and in relation to a Hobbs Act Robbery in violation of 18 U.S.C § 924(c) and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Petitioner now argues that his underlying § 924(c) conviction is no longer a crime of violence in light of *United States v. Davis*.<sup>1</sup>

### II. DISCUSSION

Petitioner asserts that his conviction under 18 U.S.C. § 924(c) is no longer a crime of violence. In *United States v. Davis*, the Supreme Court held that the crime of violence definition in § 924(c)(3)(B) was unconstitutionally vague.<sup>2</sup> However, the definition of crime of violence in

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<sup>1</sup> 139 S. Ct. 2319 (2019).

<sup>2</sup> *Id.* at 2336.

§ 924(c)(3)(A) remains valid. The United States Court of Appeals for the Tenth Circuit has repeatedly held that Hobbs Act Robbery, Petitioner's predicate offense, is categorically a crime of violence under § 924(c)(3)(A).<sup>3</sup> The Tenth Circuit has continued to so hold after *Davis*.<sup>4</sup> Because Petitioner's § 924(c) conviction remains valid under the elements clause of § 924(c)(3)(A), his Motion fails.

### III. CONCLUSION

It is therefore

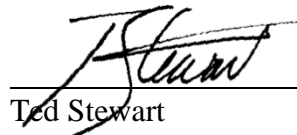
ORDERED that Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket No. 1 in Case No. 2:20-CV-607 TS) is DENIED and DISMISSED. It is further

ORDERED that, pursuant to Rule 8(a) of the Rules Governing § 2255 Cases, an evidentiary hearing is not required. It is further

ORDERED that pursuant to Rule 11(a) of the Rules Governing § 2255 Cases, the Court DENIES Petitioner a certificate of appealability.

DATED this 8th day of January, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

Ted Stewart  
United States District Judge

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<sup>3</sup> See *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1064–66 (10th Cir. 2018).

<sup>4</sup> See *United States v. Myers*, 786 F. App'x 161, 162 (10th Cir. 2019).